

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LINDSAY O'BRIEN QUARRIE,

Plaintiff,

v.

No. 13-cv-0349 MV/SMV

NEW MEXICO INST. OF MINING & TECH., et al.,

Defendants.

ORDER

THIS MATTER is before the Court on Plaintiff's Second Motion to Compel Production of Documents [Doc. 152] ("Second Motion to Compel"), filed on July 7, 2014, and Plaintiff's Motion to Produce Graduate Records of Jonathan Brown for In Camera Review [Doc. 159] ("Motion for In Camera Review"), filed on July 29, 2014. Defendants responded to the Second Motion to Compel on July 22, 2014, [Doc. 157], and responded to the Motion for Review on August 12, 2014, [Doc. 169]. Plaintiff replied regarding the Motion for In Camera Review on August 14, 2014. [Doc. 170]. No reply was filed regarding the Second Motion to Compel. The Court, having considered the briefing, the record, and relevant law, finds that both motions are not well-taken and shall be DENIED.

BACKGROUND

On January 13, 2014, Plaintiff filed his Motion to Compel Production [Doc. 87] ("First Motion to Compel"). Plaintiff sought the academic transcript of Jonathan Brown, the complete report of Jonathan Brown's Ph.D. Advisory committee, all electronic records sent and received between Lorie Liebrock and Jonathan Brown between January 2010 and May 12, 2012,

pertaining to his academic program, and all electronic records sent and received between the Defendants pertaining to Plaintiff. [Doc. 87] at 2. Defendants opposed on the grounds that Plaintiff failed to confer in good faith regarding Defendants' objections as required by Fed. R. Civ. P. 37(a)(1). [Doc. 88] at 2. Defendants also requested the Court to conduct an in camera review and redact any sensitive information in the event that the Court granted Plaintiff's requests for academic records related to Jonathan Brown. *Id.* at 9–10. On February 12, 2014, the Court stayed discovery pending the adjudication of Defendants' Motion for Summary Judgment on the Grounds of Qualified Immunity. [Doc. 102]. As a result of the stay, the Court denied Plaintiff's First Motion to Compel without prejudice for re-filing. *Id.*

Plaintiff's Second Motion to Compel requests that Defendants provide him with the documents at issue in his First Motion to Compel. [Doc. 152] at 1. Defendants object on the same grounds as their original response to the First Motion to Compel. [Doc. 157] at 2.

In his Motion for In Camera Review, Plaintiff asks the Court to order Defendants to produce all of Jonathan Brown's graduate records for in-camera review. [Doc. 159] at 1. Defendants respond that this request is an extension of the Second Motion to Compel and should be denied on the same grounds. [Doc. 169] at 2.

ANALYSIS

Federal Rule of Civil Procedure 37 allows a party to move to compel disclosure or discovery. However, the Rule expressly requires that the movant certify that he "has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Fed. R. Civ. P. 37(a)(1). Plaintiff does

not dispute Defendants' contentions that he has not conferred in good faith regarding their objections. Therefore, the Court finds that Plaintiff has failed to confer in good faith as required by Rule 37. The Court will deny the Second Motion to Compel without prejudice for re-filing. Plaintiff must confer in good faith before re-filing the motion.

Because the Court will deny the Second Motion to Compel, the Court finds that the Motion for In Camera Review is moot. The Court will address whether in camera review is necessary if Plaintiff the parties are unable to resolve this issue after conferring in good faith.

IT IS THEREFORE ORDERED that Plaintiff's Second Motion to Compel Production of Documents [Doc. 152] is **DENIED without prejudice** for re-filing within 15 days from the date of this order. Plaintiff may re-file the motion if any grounds for doing so remain after the parties have conferred in good faith.

IT IS FURTHER ORDERED that Plaintiff's Motion to Produce Graduate Records of Jonathan Brown for In Camera Review [Doc. 159] is **DENIED as moot**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge